

**FOSTER CARE
PLACEMENT OR
PRE-ADOPTIVE
PLACEMENT**

Any Indian child referred for foster care (this includes a juvenile justice ward) or adoption must be placed in the least restrictive setting which most approximates a family and in which his or her special needs, if any, will be met. The child must also be placed within reasonable proximity to his or her home, taking into account any special needs of the child.

Absent tribal law, regulation, or resolution by the child's tribe, the placement should meet the prevailing social and cultural standards of the Indian community in which the parent(s) or extended family resides, or with which the parent(s) or extended family members maintain social and cultural ties.

The caseworker must work in collaboration with the child's tribe regarding foster care or pre-adoptive placement. If the placement preferences listed below cannot be met, the caseworker must ask the child's tribe for assistance in locating an appropriate placement.

**FOSTER CARE
PLACEMENT
PREFERENCE**

The order of foster care placement preference is as follows, unless the Indian child's tribe has a different preference, or the court determines there is good cause for a different order of preference (MCL 712B.23(1) & (6) and 25 CFR 23.131):

- A member of the Indian child's extended family.
- A foster home approved, licensed or specified by the Indian child's tribe.
- An Indian foster home approved by the department.
- A child caring institution approved by an Indian tribe, or operated by an Indian organization that has a program to meet the Indian child's needs.

If a tribal family contacts the department pertaining to placement consideration for a case at any time other than initial placement search the family must be considered; see DHS-588 and Diligent Search section on page 3 of 5.

**ADOPTIVE
PLACEMENT
PREFERENCE**

Unless a tribe has tribal law, regulation, or resolution to deviate from the Indian Child Welfare Act (ICWA)/Michigan Indian Family Preservation Act (MIFPA) placement preferences; or the court finds good cause to deviate from placement preferences, the order of adoptive placement preference is as follows (MCL 712B.23(2) & (6) and 25 CFR 23.130):

- A member of the Indian child's extended family.
- Other members of the Indian child's tribe.
- Other Indian families.

When recommending deviation from placement preference, the caseworker must demonstrate good cause **not** to follow the order of preference, and the adoptive placement preference must be based on reasons found in the BIA ICWA Final Rule, 25 CFR 23.132. Only the court may determine good cause to **not** follow the order of preferences.

Youth 12 years or older, as developmentally appropriate, must be engaged to solicit their preferences in placement recommendations.

Documentation of each placement of an Indian child must be maintained evidencing the efforts to comply with the order of placement priorities in MiSACWIS Personal History ICWA Details page(s).

Permanency Planning

In Indian child welfare, permanency also means maintaining ties with extended family and tribe; see also FOM 722-7, Permanency Planning and NAA 245 Permanency Planning.

**REPLACEMENT OF
INDIAN CHILD(REN)
IN FOSTER CARE
OR PRE-ADOPTION
PLACEMENTS**

Replacement of an Indian child in temporary foster care (this includes a juvenile justice ward) or pre-adoptive placement must follow the established ICWA/MIFPA placement preferences. The

policy of least restrictive setting appropriate to the Indian child's needs must also be followed, unless the Indian child is returned to the parent(s) or Indian custodian(s) from whose custody the Indian child was originally removed.

The caseworker must work in collaboration with the child's tribe regarding foster care or pre-adoptive replacements.

Replacement Hearing Notification

The caseworker must notify the parent(s) or Indian custodian(s) and the tribe, of any hearing to change placement; see [NAA 210 Notification of Court Proceeding](#).

DILIGENT SEARCH

An Indian child placement agency or tribal facility/institution may be contacted to help caseworkers and tribes identify Indian placement options after previous Indian Child Welfare Act (ICWA)/Michigan Indian Family Preservation Act (MIFPA) placement preferences are eliminated from consideration.

Furthermore, other placement agency foster care (PAFC) agencies may have Indian homes available through their agency which would be considered a placement preference as well.

Caseworkers may contact Native American Affairs (NAA) or visit the [MDHHS Native American Affairs website](#) for a MDHHS American Indian/Alaska Native foster care home list, tribally licensed foster home list; or a tribal PAFC, detention facility, or group home listing to assist with placement of Indian children in an Indian home if a family or child's tribe does not have a home available or suitable to meet the needs of the child.

ANONYMITY

If a consenting parent desires anonymity, the court and agency must take steps to keep information related to the parent confidential and sealed from disclosure; it does not preclude notice responsibility or compliance with ICWA/MIFPA to the tribe.

**GOOD CAUSE TO
DEPART FROM
PLACEMENT
PREFERENCES**

If any party in a child-custody proceeding (MDHHS or placement agency foster care [PAFC] caseworker, tribe, child, parent, or Indian custodian) asserts that good cause to not follow the placement preferences exists, the reasons for that belief or assertion must be stated orally on the record or provided in writing to the parties to the child-custody proceeding, and the court.

The party seeking departure from the placement preferences must prove by clear and convincing evidence that there is "good cause" to depart from the placement preferences.

If a caseworker is recommending good cause to depart from ICWA/MIFPA placement preferences to the court, they must be made on the record or in writing and should be based on one or more of the following considerations:

1. The request of one or both the Indian child's parents, if they attest that they have reviewed the placement options, if any, that comply with the order of preference;
2. The request of the child, if the child is of sufficient age and capacity to understand the decision that is being made;
3. The presence of a sibling attachment that can be maintained only through a particular placement;
4. The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live;
5. The unavailability of suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the preference criteria, but none has been located. For purposes of this analysis, the standards for determining whether a placement is unavailable must conform to the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or with which the Indian child's parents or extended family members maintain social and cultural ties.

A placement may not depart from the preferences based on the socioeconomic status of any placement preference compared to another placement option.

A placement may not depart from the preferences based solely on ordinary bonding or attachment that flowed from time spent in a non-preferred placement that was made contrary to ICWA/MIFPA; see Bureau of Indian Affairs (BIA) ICWA Final Rule Section 23.132.

LEGAL BASIS

Bureau of Indian Affairs (BIA) ICWA Final Rule, 25 CFR 23.

Indian Child Welfare Act, 25 USC 1901 et seq.

Michigan Indian Family Preservation Act, MCL 712B. 1 - 41.